

# HUMAN RIGHTS: WHAT THEY ARE AND WHAT THEY ARE NOT

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Most of the debate about human rights has nothing to do with real human rights. The concept of human rights is what philosophers call an 'hurrah' word, with strong positive connotations, in contrast to 'boo' words, which create highly negative feelings, such as 'torture'. This means that every group seeks to obtain their own ends by labelling their wants as human rights. This forcefully struck me when I attended the UN Conference on Human Rights in Vienna in May 1993. Most of the discussion was about special group rights, such as those for women or aboriginals, while the Dalai Llama was denied the opportunity to speak about the Chinese oppression of Tibet. The neglect of real human rights is a reflection of a shift in the academic debate, which now talks of three waves in human rights: the first, of political and civil rights; the second, of economic and social rights, and the third wave is cultural, or the rights of peoples. Academic discussion often presents these waves as a natural and inevitable progression. Only the first wave are genuinely human rights, and the failure to understand that is one of the greatest obstacles today to the recognition and achievement of real human rights.

The lack of clarity over the meaning human rights allows them not to be respected. First, it reduces the moral force of the claim if a minimum wage is the equivalent of burning books. Second, it enables those governments who systematically fail to respect human rights to claim that while they have a poor record in some areas, they have a better record in others. Third, it distracts attention from the denial of human rights. Fourth, it distorts priorities when the activities of the UN or the European Court of Human Rights is given to other issues.

We need to define what is meant by human rights. A right is something someone ought to have, that is, a moral entitlement, and is much more than a want or desire. Human rights are different from those rights that are recognised by the state, known as 'positive

rights', which may or not be human rights. One of the major goals of the human rights movement is to turn human rights into positive rights. 'Human' means that these rights belong to all human beings, regardless of nationality, religion, gender, ethnic group, or sexual preference. This means not only that they apply to every person throughout the world, but that they belonged to every human being that has ever existed.

Any human right has to meet three criteria. First, it must be universal, belonging to everyone throughout time. There can be no special rights attributable to only some. Second, it must be absolute. It cannot be legitimately limited by calls of public interest. Only when human rights come into conflict with each other can those rights be limited. For example, a terrorist, who kills others and thus denies them their right to life, may be denied his right to life through capital punishment or (as I would prefer) his freedom by time in prison. Third, it is inalienable. It is not possible to surrender that right, for example it is not possible to sell yourself into slavery. Let us apply these criteria to the three waves of 'human rights' in order to demonstrate that the only such rights are political and civil (or liberty rights) and that the others do not deserve the special status of a human right.

## POLITICAL AND CIVIL RIGHTS

These have historically been called natural rights. Their earliest modern exponent was John Locke who noted the existence of the natural rights to "life, liberty and property". The US Declaration of Independence states: "We hold these rights to be self-evident: that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness." The French Declaration of the Rights of Man asserted that "the purpose of all political association is the conservation of the natural and inalienable rights of man: these

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FOR LIFE, LIBERTY AND PROPERTY



rights are liberty, property, security and resistance to oppression.” In 1948, these rights were recognised in Articles 1 to 20 of the UN Declaration of Human Rights. These are best described as “liberty rights”, that every one has an equal right to be free from interference by the state or others.

Widely recognised as human rights are the right of life (not be killed, tortured or crippled), freedom of expression, freedom to own justly acquired property, freedom of movement, freedom of religion, a fair trial and equality before the law. Slavery, torture and arbitrary detention are all denials of human rights. These are best viewed as limits upon the state, that the state shall not interfere with the rights of individuals within their territory. The state’s role is to ensure that these rights are embodied in their laws, that is, that they become ‘positive rights’. The concept of human rights also create an obligation by all not to interfere with the rights of others, the principle of reciprocity.

One political right that is frequently presented as a human right, that I would deny is one, is the right to vote. Article 21 of the UN Declaration declares the right to participate “in periodic and genuine elections ... by universal and equal suffrage”. However, although democracy should be seen as one means of protecting those rights, it is not such a right itself. It would be nonsense to talk of democracy for a prehistoric man. The case for representative democracy is empirical rather than moral: the historical evidence suggests that liberal democracies are more likely to protect those rights than dictatorships. However, democracies themselves are also great deniers of those rights, especially when democracy becomes the tyranny of the majority.

## ECONOMIC AND SOCIAL RIGHTS

Articles 21 to 30 are ‘economic, social and cultural rights’ and have characteristics totally different from political and civil rights. The worst example is Article 24, “the right to rest and leisure, including ... periodic holidays with pay”! Other so-called ‘rights’ include those to social security, work, just and favourable conditions of employment, equal pay for equal work, just and fair remuneration, an adequate standard of living, housing and medical care, education, and the right to enjoy the arts. These are also enshrined in the 1966 UN Covenant on Economic, Social and Cultural Rights.

These may or may not be desirable, but they are not human rights. They are claims to ‘welfare rights’ rather than ‘liberty rights’. They were included in the UN Declaration at the insistence of the Soviet Union who hoped to use them against the West. The West accepted them in the hope that the Soviet Union would sign the Declaration, although in the end it abstained.

The case against these ‘welfare rights’ as human rights is first, that they are not universal. For example, “holidays with pay” can only belong to employed workers, and excludes the self-employed, the unemployed and homemakers. Second, they are not absolute, because they depend on relativities, such as the vast differences that exist with regard to an adequate standard of living from country to country and historical era to era. This is acknowledged in Article 22 on the right to social security, which is qualified by “in accordance with the organisation and resources of each State”. Third, they are not inalienable. For example, someone may wish to surrender his right to rest and leisure in order to increase his income. So such claims fail to meet the necessary three criteria. A fourth argument is that an ‘ought’ must involve a ‘can’, but these ‘welfare rights’ are dependent on available resources, with most societies now and throughout history lacking the necessary means to satisfy these aspirations. Fifth, they demean political and civil rights: human rights are moral imperatives that can be respected now, not economic and social aspirations that might be satisfied in the future. Sixth, economic rights are an attack on liberty rights in order to achieve these welfare rights. A meaningful right to medical care would create an obligation on the medical profession to provide that care, regardless of the wishes of doctors and nurses, thus denying them freedom. An example of this is when pro-choice advocates demand that doctors and nurses who morally object to abortion should be forced to carry them out if no other medical assistance is available.

These welfare demands are not human rights.

## CULTURAL RIGHTS

The UN Covenant of Economic, Social and Cultural Rights began in Article 1 with the statement that “all peoples have the right to self-determination”. Article 25 declared “the right of all peoples to natural wealth and resources”. This was echoed in the Organisation of African Unity’s Charter of Human and People’s Rights in 1981 that “all peoples have a right to be equal”. UNESCO declared “the right of all ... peoples to preserve their cultures”. The 1957 UN Convention on Indigenous and Tribal Populations declared that “special measures shall be adopted for the protection of the institutions, persons, property and labour of these populations”. The UN Conference on Human Rights in 1993 was dominated by the assertion of these group rights.

The case against group rights begins when they fail to meet the three necessary criteria. First, they are not universal, because they are claims by particular groups, such as women or aboriginals, which means by definition that they cannot belong to all humans. Second, they are not absolute, because the ‘rights’ of one group are pitched against another, as in the right of self-determination in Bosnia, and ethnic cleansing is encouraged with the emphasis on group or cultural identity instead of respect for the rights of others. Third, they are not inalienable, as immigrants frequently prove when they willingly surrender their former identity in order to embrace something new, as thousands of new American citizens do every day, as do black British and integrated Jews. Fourth, the natural rights tradition holds that human rights must belong to individual human beings and cannot belong to any collective. Cultures, languages, tribes, and nations are not rights-bearing entities. Fifth, cultural rights deny the equal rights of every human being, but become an instrument for the special treatment of certain groups, for example in positive discrimination.

It is important to recognise that certain groups within society, such as women and gays, have been denied their human rights, but the goal is to ensure that every one has the same rights respected, not that certain groups are entitled to special rights because of their mistreatment in history.

## CONCLUSION

This discussion is not academic nit-picking or playing with words. A clear understanding of the concept of human rights is vital for their protection and promotion, especially for all those who are denied them daily. Not all that is desirable is a right. Not all rights are human rights. It is an obscenity to equate torture — such as giving electric shocks through a person’s genitals — with not having a paid holiday. We must not let them — states and their conscious and unconscious ideological allies — get away with it.

## RECOMMENDED READING

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